IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2977 OF 1998

1.Mr.Sopan Shankar Temgire,)
2.Mr. Tukaram Shankar Temgire,)
3.Smt. Jeejabai Shankar Temgire,)
4.Mrs.Bababai Madhu Shivale)
5.Mrs. Mathabai Ananda Taras)
6.Mrs. Shalan Sopan Bhalekar)
7.Mr.Jalinder Jagannath Bhapkar)
8.Mr.Sanjay Jagannath Bhapkar)
9.Mr.Ishwar Jagannath Bhapkar)..Petitioners

Versus

1.Special Land Acquisition)
Officer No.22, Pune.)
2.State of Maharashtra)..RESPONDENTS

Mr.Vishwajeet Sawant with Mr. Rameshwar Gite and Mr. Anilkumar Patil, for the Petitioners.

Mr. R.M. Patne, AGP for Respondent No.1.

CORAM: F.I. REBELLO & S.P.KUKDAY, JJ.
DATE : 18th March, 2005

ORAL JUDGMENT (PER S.P. KUKDAY, J.):

. The petitioners have filed this petition challenging the validity of the Award in respect of their land under Section 11A of the Land Acquisition Act, 1884 on the ground that the Award was not passed within the period of two years from the publication of the declaration under Section 8 of the Land Acquisition Act.

2. The petitioners are owners of land Survey No.129 Hissa No.2 situated at village Jambhe admeasuring 3 Hectares 70 Ares. The Government implemented the Kasarsai Irrigation Project in this area and required land for the rehabilitation of the

project affected persons. For that purpose the lands of the petitioners to the extent of 1 Hectare 20 Ares was acquired by the Award dated 31st October, 1992. It is the contention of the petitioner that during the procedure followed for making of the Award at no point of time they were served with any notice. When they got information about the award and made inquiries with the Land Acquisition Officer they were shocked to know that the process was already complete. They were given to understand that they should accept the compensation and that would not in any way affect their right to challenge the validity of the Award. Therefore, the petitioner accepted the compensation of Rs.36,020/-. The petitioners then took legal advise and found that a wrong has been done to them and the Award under which their land is acquired is in fact illegal. The petitioners, therefore, filed Special Civil Suit No.363 of 1994 on 11th March, 1994 in the Court of Civil Judge, Senior Division, challenging the validity of the Award on the ground of non-compliance with the mandate of Section 11A of the Land Acquisition Act, 1894. (hereinafter referred to as the said Act). The suit came to be dismissed on 17th March, 1998 on the ground that the Civil Court has no jurisdiction to adjudicate upon the controversy involved. The petitioners, thereafter, immediately filed the present petition challenging the award. After filing of the petition their possession was protected by ad-interim order of this Court dated 26th June, 1998.

The petitioners pray that award dated 31st October, 1992 so far as it concerns the acquisition of land admeasuring 1 Hectare 20 Ares belonging to them be set aside.

3. By filing affidavit in reply the Land Acquisition Officer No.22 (respondent No.1) has placed necessary facts on record. According to the Respondent No.1 the Award was processed and was submitted to the Collector on 15th March, 1991 with all the details. The requirements of Section 11 of the Land Acquisition Act were completed by 23rd May, 1991 though the award was published on 31st October, 1992. The possession of the land belonging to the petitioners was taken on 26th August, 1993 after the payment of compensation. It is contended that Section 11A of the Act does not contemplate declaration of the award. Therefore, there is no question of there being any specific date regarding the declaration of the award. It is further submitted that the land acquired has been distributed to one Baban Abaji Kedari and Tukaram Vithoba Kedari and the entries in that behalf are taken in the 7 x 12 extract. The respondent No.1 submitted that in view of these facts the petition deserves to be dismissed.

4. At the outset it may be mentioned that the point which arises for determination in this petition is whether this Court should exercise its extra

ordinary jurisdiction under Article 226 of the Constitution of India for redressal of the grievance of the petitioners. Learned Counsel for the petitioners has argued that the petitioners are all along in possession of the land Survey No.129 Hissa No.2. Their the possession was protected by the ad-interim order of this Court dated 26th June, 1998.

5. As against this it has been pointed out by the learned A.G.P. on behalf of the State that the documents annexed to the affidavit in reply would show that the possession of the disputed land was taken by the Land Acquisition Officer on 26th August, 1992. Statement of Sopan Shankar Temgire, the petitioner No.1 and receipt executed by him in respect of the compensation of Rs.36,020/- dated 10th August, 1992 are filed on record. At the foot of this receipt there is an endorsement that the cheque is received on 26th August, 1993. It can be seen that the respondents rely on these documents to contend that the possession was taken. However, as large trackts of land are required to be acquired for the purpose of resettlement, it is difficult to take physical possession of the land. The normal mode of taking possession is drafting a panchanama in the presence of Panch, taking symbolic possession and subsequently giving delivery of the possession to the beneficiaries. The petitioners have filed Civil Suit on 11th March, 1998. The suit came to be dismissed on 17th March, 1998 for want of jurisdiction and the

present petition is filed in the month of April, 1998. After filing of the petition ad-interim order is issued in favour of the petitioners. These facts would show that the petitioners must be all along in physical possession of the disputed land. In that view of the matter the documents filed on record would be in respect of taking of symbolic possession. It is pertinent to bear in mind that besides two documents purported to have executed by the petitioner No.1 and a mutation entry in 7 x 12 extract no other material is placed on record by the respondents to show that the possession is in fact handed over to the beneficiaries. During the pendency of the petition till now it has not been brought on record that in fact the possession is handed over to the beneficiaries. If these facts are considered the contention of the learned Counsel for the petitioners that the petitioners are all along in physical possession of the disputed land will have to be sustained.

6. In this case it is not in dispute that the award has been passed and compensation has been received by the petitioners. In this context the learned Counsel for the petitioner contends that mere acceptance of the compensation does not amount to waiver of his right to challenge the validity of the award. For this purpose reliance is placed on the ruling of the Calcutta High Court in the matter of **Amarendra Nath Nath & Ors. V. State of West Bengal**

& Ors., reported in 67 C.W.N. 647. While dealing with this aspect Their Lordships of the Calcutta High Court observed at page 655 as under:-

> "It may incidentally be mentioned at this stage that so far as Appeal No.35 of 1962 is concerned some objections were attempted to be taken on behalf of the State that it was no longer open to the appellant in that case to challenge the proceedings in view of the fact that the amount of compensation awarded had been withdrawn. There is some dispute before us as to whether the amount had actually been withdrawn; but we think this aspect of the matter is wholly immatoriao. We are not persuaded that mere withdrawal of the compensation awarded will disentitle the awardee to relief if he is found otherwise entitled to it. Right to hold property is indeed a fundamental right and it has aptly been said on behalf of the appellants that there can be no waiver of such right. Acceptance of the award cannot, in our view, be taken as amounting to such waiver as would disqualify the awardee to ask for relief and obtain it under Article 226 in an appropriate case."

This position is now settled. Accepting compensation does not prevent the petitioners from challenging the

validity of the Award itself and if they succeed the question of waiver will not be relevant.

7. Lastly learned Counsel for the petitioners contends that the Award is not made within the period of two years from the publication of the declaration under Section 6 of the Act. Therefore, the award is illegal and the actions of the State in making the award has to regarded as non est. Section 11A of the Act lays down the period of two years for the making of the award under Section 11 from the date of publication of the declaration under Section 6 of the Act. There are 3 modes of publication. Of these the last date of publication is to be taken into account for the calculation of the period of two years. In the present case it is not in dispute that the Notification under Section 4(1) is published on 17th September, 1990. As seen from the award itself the last date of publication of declaration under Section 6 is 25th September, 1990. Therefore, the award has to be passed on or before 24th September, 1992. It is not in dispute that the Award has been made on 31st October, 1992. The learned A.G.P. has referred to the explanation given in the affidavit in reply that all the formalities were completed on 23rd May, 1991 though the Award was declared on 31st October, 1992. This contention can not be sustained as the relevant date is the date of publication of the Award which is 31st October, 1992 and is beyond the period of two years from 25th September, 1990. In the

present case there is no dispute that the Award is declared on 31st October, 1992 as seen from para.5 of the affidavit in reply of Ramdas Dadaram Khadtare. It is, therefore, apparent that the Award is not published within two years of the declaration under Section 6 of the Act. Therefore, in view of the amended Section 11A of the Act the Award would be illegal. Learned Counsel for the Petitioners has urged before us that the Award passed in contravention of Section 11A is no Award in the eye of law. For this purpose reliance is placed on the ruling of the Supreme Court reported in **State of U.P. & Ors. v. Rajiv Gupta & Anr., (1994) 5 S.C.C.686**. Considering these aspects their Lordships have observed in para.5 of the report as under:-

> "5. Its bare reading indicates and emphasises the limitation within which the award should be made and has been statutorily determined, namely, the Collector shall make an award within a period of two years from the date of the publication of the declaration. It is common knowledge that after declaration was published, years used to roll by to make the award and the owners of the lands were put to great hardship. Parliament intended to relieve the owners of the lands from this hardship and pegging of the price prevailing as on date of publication of Section 4(1) notification. It

> is, therefore, a mandatory duty cast on the Land Acquisition Collector to make the award strictly in accordance with the limitation under Section 11-A. If no award is made within that period, the entire proceedings for the acquisition of the land shall lapse. In other words, on expiry of two years from the date of the publication of the declaration unless the proviso is attracted, if no award is made in the meantime, in the eye of law the proceedings initiated under Section 4(1) of the Act culminated in the declaration made under Section 6 shall stand lapsed and no proceedings, in the eye of law thereafter do exist, to take further action."

In the present case as the award has not been made within the mandatory period of two years the award is illegal and cannot bind the petitioners. The entire process of making the award lapses and no proceedings in the eye of law exist thereafter. Therefore, the land of the petitioners cannot be acquired under this award.

. It can be seen from the material on record that the petitioners are in possession of the land in question and that they have challenged validity of the award at the earliest opportunity. The petitioners are not guilty of delay or latches. There is no material to show that third party rights

are created. Hence in the facts of the present case there can be no impediment in exercising jurisdiction under Article 226 of the Constitution.

8. Learned Counsel for the petitioners has further submitted that the award has been challenged in this Court by another aggrieved person in Writ Petition No.5395 of 1997. That petition has been decided by this Court on 23rd December, 1997. The minutes of the order would show that as the award was not passed within the period of two years it has been declared to be illegal. The petitioners in that case are directed to redeposit the amount at the time of setting aside and quashing the award. Similar approach will have to be adopted here also. The earlier petition was filed in the year 1997 and was decided on 23rd December, 1997. Therefore, the period was very short. However, the present petition has been pending for some time. The petitioners cannot be allowed to retain the amount of compensation without interest. Therefore, it would be in the fitness of the things to direct the petitioners to redeposit the amount of compensation along with interest at the rate of 12% per annum from the date of payment i.e. from 27th August, 1993 till the date of payment redeposit.

10. In the light of the above Rule made absolute in terms of prayer clause (a) in so far as the petitioners land is concerned. The petitioners are

directed to redeposit the compensation of Rs.36,020/- with interest at the rate of 12% per annum from 27th August, 1993 till payment within 14 weeks from today. Rule made absolute accordingly. No order as to costs.

(F.I. REBELLO, J.)

(S.P. KUKDAY, J.)